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No. [redacted] 12

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1937.

D. F. STAHMANN, ANNA M. STAHMANN and JOYCE F. STAHMANN, doing business as Stahmann Farms Company, a partnership,

Petitioners,

versus

S. P. VIDAL, Collector of Internal Revenue for the District of New Mexico,

Respondent.

PETITION AND BRIEF FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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SUBJECT INDEX

INDEX OF AUTHORITIES

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TO THE SUPREME COURT OF THE UNITED STATES:

Your Petitioners, D. F. Stahmann, Anna M. Stahmann, and Joyce F. Stahmann, respectfully request this Court to review by Writ of Certiorari a Judgment of the United States Circuit Court of Appeals for the Tenth Circuit, in which that Court reversed a decree of the District Court for the District of New

Mexico. The Trial Court had rendered a Judgment in favor of your Petitioners against S. P. Vidal, Collector, for the sum of $13,064.52, with interest on $11,193.99 from December 21, 1934, at 6% per annum and interest on $1,870.53 from January 26, 1935, at 6% per annum and costs of suit. The Judgment was for the amount of taxes paid by Plaintiffs as producers of cotton in excess of the quota allowed them under what is commonly known as the Bankhead Cotton Control Act of 1934, the Trial Court having found that the Act was unconstitutional, and that Plaintiffs were entitled to a refund of the tax paid. The appellate court held that the tax was levied against the ginner of the cotton, and that Plaintiffs, the producers, were mere volunteers and could not recover.

A similar case was filed by Stahmann Farms against the United States in the District Court of the United States for the Western District of Texas, at El Paso. District Judge Boynton reached the same conclusion which was reached by the United States District Judge for the District of New Mexico, and entered Judgment against the United States for the recovery of the taxes paid by Stahmann Farms. The case is now pending in the United States Circuit Court of Appeals of the Fifth Circuit in case No. 8636, United States of America, Appellant, v. D. F. Stahmann and others.

A.

SUMMARY STATEMENT OF THE MATTERS INVOLVED

1. Was the producer of cotton raised during the year 1934 who paid the taxes levied by the Bankhead Act, in order to be able to obtain possession of his cotton from the ginner and to sell it, a mere volunteer, and therefore not entitled to a refund of the tax, even though the tax was in fact invalid because in violation of the Constitution of the United States?

2. When it has been shown that the producer of cotton could not move his cotton from the gin, transport it beyond the county or sell it without paying the taxes levied by the terms of the Bankhead Act with reference to said cotton, and that because of the provisions of the Bankhead Act the producer could not make any beneficial use of said cotton without paying said tax, was the producer who, under such circumstances, paid said tax a mere volunteer, and not entitled to recover said taxes, if they were in fact invalid, because in violation of the Constitution of the United States?

3. Were the so-called taxes levied under the Bankhead Cotton Control Act valid and enforceable taxes?

4. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Cotton Control Act invalid because of the fact that it was a supplement to the invalid Agricultural Adjustment Act, and because its taxes were levied to be used solely to pay benefits under the Agricultural Adjustment Act, to pay the expenses of the administration of the Bankhead Act, and to assure compliance of farmers with and to supplement the Agricultural Adjustment Act?

5. Was the so-called ginning tax levied and assessed in ac-

cordance with the terms of the Bankhead Act invalid because in violation of the Tenth Amendment to the Constitution providing: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"?

6. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Act invalid because in violation of the Fifth Amendment to the Constitution, providing: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty or property, without due process of law;* nor shall private property be taken for public use, without just compensation"?

7. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Act invalid because in violation of Article 1, Section 9, cl. 4 of the Constitution, providing: "No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken"?

8. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Act invalid because in violation of Article 1, Section 2, cl. 3 of the Constitution, providing: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers"?

9. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Act invalid because

in violation of Article 1, Section 8, cl. 1, providing: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"?

10. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Act invalid because in violation of Article 1, Section 1, providing: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives"?

We shall state sufficient of the pleadings and of the evidence to show that the above questions are involved in the decision of this case.

PLEADINGS

Plaintiffs' Original Petition, filed May 5, 1936 (R. 1 - 3)

1. Plaintiffs, during the crop year 1934-1935, were engaged in the growing of cotton in Dona Ana County, New Mexico, cultivating a plantation having an acreage of more than 2000 acres, and which they had been cultivating for many years.

2. During the year 1934, they produced a quantity of cotton in excess of the quota permitted them under the Bankhead Cotton Control Act, and in order to sell or to market the cotton which they had raised in excess of said quota, they were compelled to obtain bale tags for said cotton, for which they were compelled to pay, under protest, the sum of $13,064.52, payment being made by Plaintiffs by their checks payable to the order of S. P. Vidal, Collector of Internal Revenue of the United States for the District of New Mexico, who collected the amounts specified in said checks. The tax was exacted from Plaintiffs by the Defendant pursuant to the provisions of the Bankhead Act. The assessment and collection of said tax by the Defendant was illegal and wrongful, in that said Act was void and unconstitutional; and the Act furnished no authority to the Defendant to demand, exact, receive, and retain said tax.

3. On March 6, 1935, Plaintiffs duly filed with the Defendant claim for refund in accordance with the provisions of law and the regulations of the Secretary of Interior, and said claim was forwarded to the Commissioner of Internal Revenue and was by him denied and rejected, and due notice thereof given to the Plaintiffs, and Plaintiffs pray Judgment for the recovery of said tax, with interest.

The pleading was verified by D. F. Stahmann, one of the Plaintiffs.

Defendant's Amended Answer, filed October 15, 1936 (R. 5 - 6)

1. Defendant admits the allegations of the first paragraph of Plaintiffs' Complaint.

2. Defendant admits that during the crop year 1934-1935 Plaintiffs produced a quantity of cotton in excess of the quota allowed them under the Bankhead Act, and that the sum of $13,064.52 was paid to Defendant on the dates and in the amounts alleged in Paragraph 2 of the Complaint. Defendant says that he denies that the amounts were paid by the Plaintiffs under protest or otherwise, and alleges that if such amounts were paid to him by the Plaintiffs they were paid to discharge the liability imposed upon a person or persons other than the Plaintiffs by the Act of April 21, 1934. Defendant denies that the Plaintiffs were compelled to pay such amounts to him, and that he illegally assessed or collected any sums from the Plaintiffs, or from any person whose liability under the Act of April 21, 1934, was discharged by the Plaintiffs.

3. The Defendant admits that on March 6, 1935, Plaintiffs duly filed a claim on the forms provided by the Treasury Department for the refund of said sum of $13,064.52; that the Commissioner of Internal Revenue rejected said claim on August 22, 1935. The allegations not admitted were denied.

The answer was verified by the Defendant.

EVIDENCE

(R. 7 - 11)

The following facts were established by admissions and stipulations. The facts admitted by the Defendant's answer were agreed to. It was further agreed that the facts upon which the Court might pass as pertinent to the issues in this case were as follows:

1. During the crop year 1934-1935, Plaintiffs produced a quantity of cotton in excess of the quota allowed them under the Bankhead Act.

2. Plaintiffs delivered their cotton to the Santo Tomas Gin Company, of Mesquite, New Mexico, for the purpose of being ginned.

3. Said Company ginned Plaintiffs' cotton, and thereafter filed monthly returns with the Collector of Internal Revenue for New Mexico for the months of October, November and December, showing a total tax due in the amount of $13,064.52.

4. Upon the returns referred to, assessments were made against the Santo Tomas Gin Company, as follows:

"Cotton ginning:

Oct.-Nov. 1934	P. T. 1934 Dec. P. 8000 L. 7	$11,193.99
	12/19/34	11,193.99 PD.
Dec. 1934	P. T. 1935 Jan. P. 8001 L. O	$ 1,870.53
	1/25/35	1,870.53 PD."

The above tax was paid by checks drawn by Stahmann Farms, payable to the Collector of Internal Revenue, as follows:

Check No. 1571 for $9131.44, dated November 27, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1584, for $1550.23, dated November 28, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1728, for $512.32, dated December 13, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934; and

Check No. 135, dated January 19, 1935, for $1870.53 drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, January 26, 1935.

5. Santo Tomas Gin Company declined to deliver the ginned cotton to Plaintiffs until the above assessments were paid and Plaintiffs paid the said tax by checks drawn by Stahmann Farms payable to the Collector of Internal Revenue in the amounts hereinbefore listed.

6. The Collector of Internal Revenue applied said payments against the assessments which appeared on his books under the name of Santo Tomas Gin Company, Mesquite, New Mexico.

7. On March 6, 1935, Plaintiff filed a claim for refund for $13,064.52, based upon the alleged unconstitutionality of the Bankhead Act.

8. The Commissioner of Internal Revenue rejected the claim on August 22, 1935.

The original stipulation purported to state the issues of law (R. 9), but this stipulation was withdrawn (R. 10).

B.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

THE CIRCUIT COURT OF APPEALS HAS HELD:

1. That the tax paid by Petitioners was a liability of the ginner, not the Petitioners, that Petitioners were strangers to the tax and volunteers, and that payment by them cannot be made the basis of a claim and suit for a refund of the tax, even though the tax were unconstitutional.

2. That taxes of this character, even though the law which provides for them be unconstitutional, cannot be recovered by the producers who actually paid them to the Defendant Collector, when they were paid without compulsion or duress.

3. That under the Bankhead Act, and under the facts of this case showing that Petitioners could not obtain possession of their cotton, sell it, transport it out of the County except for storage, open a bale of it or make any beneficial use of it, unless the tax were first paid, there was no compulsion or duress which justified the Petitioners in paying the tax and suing for a refund.

4. That the Petitioners in this case were not the proper parties to bring this suit for a refund.

5. That it should refrain from holding the Bankhead Cotton Control Act unconstitutional, because since Petitioners were not the proper parties to maintain this suit, it was not necessary to rule upon such question.

6. That the Judgment of the District Court allowing Petitioners a recovery should be reversed, and that this case should be remanded with directions to dismiss the Complaint.

THE CIRCUIT COURT OF APPEALS HAS DECIDED IMPORTANT QUESTIONS OF FEDERAL LAW HEREAFTER STATED WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THE SUPREME COURT, AND HAS ERRONEOUSLY REFUSED TO HOLD THAT THE BANKHEAD COTTON CONTROL ACT IS UNCONSTITUTIONAL.

(1) The facts showed that under the terms of the Bankhead Act, the taxes paid by Petitioners were required to be paid in order for Petitioners to obtain possession of their cotton from the ginner, to sell it, to move it beyond the county in which it was ginned, or to make any beneficial use of it. Under such circumstances, could Petitioners, who were the producers and owners of the cotton, recover the taxes which they had paid if the taxes levied by the terms of the Bankhead Act were invalid?

(2) The facts showed that the ginner of the cotton belonging to Petitioners would not permit them to have possession of their cotton unless the taxes assessed by the Bankhead Act with reference to such cotton were first paid by them. Petitioners, in order to obtain possession of their cotton, and to use and dispose of it, paid the taxes to the Defendant collector by their own checks, payable directly to him, and which were cashed by him. A claim for refund was duly filed by Petitioners and rejected by the Commissioner, and notice of such action was given to Petitioners and no refund was made. Under such circumstances, was the Trial Court correct in entering a Judgment in favor of Petitioners for a refund of said taxes, if they were levied and assessed under a void Act?

(3) The Bankhead Act provides for a ginning tax of one-half of the average central market price of cotton, upon all cotton raised in the United States, but exempts from such tax, cotton raised on each particular farm which is not in excess of

the quota fixed for that farm by the Secretary of Agriculture, and provides that payment of the tax may be postponed while the cotton is in storage, but must be paid before it is moved for sale or use. The terms of the Act itself show that the tax is in the nature of a penalty assessed against each farmer for raising more cotton than the Secretary of Agriculture has fixed for his quota. Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Peti. oners was invalid because in violation of the Tenth Amendment to the Constitution, which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people", and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

(4) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners was invalid, because in violation of the Fifth Amendment to the Constitution, which provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation", and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(5) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners was invalid,

because in violation of Article 1, Section 9, cl. 4 of the Constitution, providing: "No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken", and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(6) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 2, cl. 3, of the Constitution providing: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers," and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(7) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 8, cl. 1, providing: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"; and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

(8) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 1, providing: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives", and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

PRAYER FOR WRIT

WHEREFORE, your Petitioners pray that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Circuit Court of Appeals for the Tenth Circuit, commanding that Court to certify and send to the Supreme Court a full and complete Transcript of the Record and of all of the proceedings in the case numbered and entitled on its docket, "No. 1568, S. P. Vidal, Collector of Internal Revenue for the District of New Mexico, Appellant, versus Stahmann Farms, a co-partnership composed of D. F. Stahmann, Anna M. Stahmann, and Joyce F. Stahmann, Appellees", to the end that this case may be reviewed and determined by this Honorable Court, as provided by the statutes of the United States, that the Judgment of the Circuit Court of Appeals for the Tenth Circuit be reviewed and reversed, and for such other relief as may seem proper to this Court.

DATED at El Paso, Texas, this 12th day of March, A. D., 1938.

Respectfully submitted,

D. F. STAHMANN, ANNA M. STAHMANN, and JOYCE F. STAHMANN, doing business under the partnership name of Stahmann Farms,

Petitioners,

By:

THORNTON HARDIE,
Of El Paso, Texas,
Attorney for Petitioners

W. C. WHATLEY,
Of Las Cruces, New Mexico,

R. NEILL WALSHE,
Of El Paso, Texas,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINION IN THE COURT BELOW

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit is reported on pages 902 to 904, Volume 93, Federal Reporter, second series (advance sheet No. 5). It is found on pages 31 to 35 of the Record. The opinion was written by District Judge Symes, and concurred in by Circuit Judges Bratton and Williams.

II.

STATEMENT OF JURISDICTION

(a) This is a suit by D. F. Stahmann, Anna M. Stahmann and Joyce F. Stahmann, doing business as Stahmann Farms Company, against S. P. Vidal, Collector of Internal Revenue of the State of New Mexico, to recover $13,064.52 paid by Plaintiffs to Defendant as taxes due by the terms of the Bankhead Act on cotton belonging to Plaintiffs, who claim that said Act is unconstitutional. Jurisdiction is based upon Section 41, Tit. 28, U. S. C. A. (R. S. of U. S., Sections 563, 629), which reads in part as follows:

"The District Courts shall have original jurisdiction as follows:

"(1) . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3000.00, and (a) arises under the Constitution or laws of the United States, . . . The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the

succeeding paragraphs of this section . . . .

"(5) *Cases under internal revenue, customs, and tonnage laws.* Fifth. Of all cases arising under any law providing for internal revenue, ... "

(b) The statutory provision which is believed to sustain the jurisdiction of this Honorable Court is Section 347, of Tit. 28, U. S. C. A. (Judicial Code, Section 240, amended). The application is filed under Section 5, Rule 38 (former rule 35) of the Rules of the Supreme Court.

(c) The Judgment of the Trial Court is dated January 30, 1937 (R. 18). The Judgment of the Circuit Court of Appeals is dated December 27, 1937 (R. 35). The Judgment denying motion for rehearing is dated February 5, 1938 (R. 47).

(d) THIS CASE INVOLVES THE DETERMINATION OF IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT BEEN BUT SHOULD BE SETTLED BY THE SUPREME COURT.

(1) The facts showed that under the terms of the Bankhead Act, the taxes paid by Petitioners were required to be paid in order for petitioners to obtain possession of their cotton from the ginner, to sell it, to move it beyond the county in which it was ginned, or to make any beneficial use of it. Under such circumstances, could Petitioners, who were the producers and owners of the cotton, recover the taxes which they had paid if the taxes levied by the terms of the Bankhead Act were invalid?

(2) The facts showed that the ginner of the cotton belonging to Petitioners would not permit them to have possession of their cotton unless the taxes assessed by the Bankhead Act with reference to such cotton were first paid by them. Petitioners, in order to obtain possession of their cotton, and

to use and dispose of it, paid the taxes to the Defendant collector by their own checks, payable directly to him, and which were cashed by him. A claim for refund was duly filed by Petitioners and rejected by the Commissioner, and notice of such action was given to Petitioners and no refund was made. Under such circumstances, was the Trial Court correct in entering a Judgment in favor of Petitioners for a refund of said taxes, if they were levied and assessed under a void Act?

(3) The Bankhead Act provides for a ginning tax of one-half of the average central market price of cotton, upon all cotton raised in the United States, but exempts from such tax, cotton raised on each particular farm which is not in excess of the quota fixed for that farm by the Secretary of Agriculture, and provides that payment of the tax may be postponed while the cotton is in storage, but must be paid before it is moved for sale or use. The terms of the Act itself show that the tax is in the nature of a penalty assessed against each farmer for raising more cotton than the Secretary of Agriculture has fixed for his quota. Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners was invalid because in violation of the Tenth Amendment to the Constitution, which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people", and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

(4) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners was invalid, because in violation of the Fifth Amendment to the Constitution, which provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the

land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation", and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(5) Under the facts of this case, as shown herein was the Circuit of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners was invalid, because in violation of Article 1, Section 9, cl. 4 of the Constitution, providing: "No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken", and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(6) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 2, cl. 3, of the Constitution providing: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers," and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(7) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 8, cl. 1, of the Constitution, providing: "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of

the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"; and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

(8) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 1, of the Constitution, providing: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives", and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

(e) It is believed that the following cases sustain the jurisdiction of the Supreme Court: *George Moore Ice Cream Co., Inc., v. Rose, Collector of Internal Revenue*, 289 U. S. 373, 53 Sup. Ct. 620; *U. S. v. Butler*, 297 U. S. 1, 56 Sup. Ct. 312; *Posadas, Collector of Internal Revenue v. National City Bank of New York*, 296 U. S. 497, 56 Sup. Ct. 349.

III.

STATEMENT OF THE CASE

The statement of the case in the preceding petition, pages 3 to 9, is hereby adopted and made a part of this Brief.

The proceedings in the Circuit Court of Appeals and Petitioners' Motion for a rehearing, which was passed upon and overruled, were sufficient to raise the questions here presented. The opinion of the Circuit Court of Appeals is found on pages 31 to 35 of the Record.

The Motion for rehearing is found on page 37 of the Record, and the order overruling the Motion on page 47.

IV.

SPECIFICATION OF ERRORS

In reversing the Judgment of the Trial Court, the Circuit Court of Appeals erred in the following particulars:

(a) The Circuit Court of Appeals in reversing the Judgment of the Trial Court held that Petitioners, who produced and owned the cotton with reference to which the tax was paid, and who, by the terms of the Bankhead Act, could not move the cotton from the gin yard, sell it, open a bale of it, ship it beyond the county or make any beneficial use of it until the tax was paid, acted as mere volunteers in paying the tax, and although they duly filed the claim for a refund of the tax paid to the Defendant collector, which was denied by Commissioner of Internal Revenue, could not recover the tax, even though the Bankhead Act was unconstitutional.

(b) The Circuit Court of Appeals held that Petitioners, in paying the tax under the facts above stated, were mere volunteers, and therefore could not recover the tax paid by them, even though it was assessed under an unconstitutional statute, and even though they had complied with the conditions precedent to filing suit for a collection of the refund of the taxes.

(c) The Circuit Court of Appeals held that the Judgment of the District Court which allowed Petitioners a recovery against the Respondent for the taxes paid to Respondent should be reversed, because the taxes paid by them were not paid under compulsion or duress.

(d) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be repaid to them by Respondent because the Bankhead Act under which they were assessed, was in violation of the Tenth Amendment to the Constitution of the United States.

(e) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be repaid to them by Respondent because the Bankhead Act under which they were assessed was in violation of the Fifth Amendment to the Constitution.

(f) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be refunded to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 9, cl. 4 of the Constitution.

(g) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be refunded to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 2, cl. 3 of the Constitution.

(h) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be refunded to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 8, cl. 1 of the Constitution.

(i) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be refunded to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 1 of the Constitution.

V.

SUMMARY OF ARGUMENT

We shall present our views under Nine Points. The Points to be discussed are applicable to the various errors of the Cir-

cuit Court of Appeals, as pointed out in the Specification of Errors. We shall, in the course of our argument, endeavor to show that the Circuit Court of Appeals erred in the paticulars above outlined.

We shall first endeavor to show that if the Bankhead Act is void, Petitioners should have been allowed to recover the taxes paid by them to Respondent. Then we shall point out why we think the Trial Court was correct in holding, and the Circuit Court of Appeals incorrect in not holding, that the Bankhead Act was unconstitutional.

VI.

ARGUMENT

First Point

The Circuit Court of Appeals erred in reversing the Judgment of the Trial Court, holding that Petitioners, who produced and owned the cotton with reference to which the tax was paid, and who, by the terms of the Bankhead Act, could not move the cotton from the gin yard, sell it, open a bale of it, ship it beyond the county or make any beneficial use of it until the tax was paid, acted as mere volunteers in paying the tax, and although they duly filed the claim for refund of the tax paid to the Defendant collector, which was denied by Commissioner of Internal Revenue, could not recover the tax, even though the Bankhead Act was unconstitutional.

Second Point

The Circuit Court of Appeals erred in holding that Petitioners, in paying the tax under the facts above stated, were mere volunteers, and therefore could not recover the tax paid by them even though it was assessed under an unconstitutional

statute, and even though they had complied with the conditions precedent to filing suit for a collection of the refund of the taxes.

It was shown that the bales of cotton with reference to which the taxes were paid by Petitioners were owned by Petitioners, and were of such character that the taxes paid were due by the terms of the Bankhead Act. It was also agreed that the Santo Tomas Gin Company, which had ginned the cotton, was in possession of it and refused to deliver the cotton to Petitioners unless they paid the tax of $13,064.52, incident to said cotton. The Cotton Control Act of 1934 (Bankhead Act) is the Act of April 21, 1934, 48 Stat. 598, c. 146, as amended by the Act of August 9, 1935 (Public Resolution 47, 74th Congress, H. J. Res. 258), and by the Act of August 24, 1935 (Pub. No. 320, 74th Congress, H. R. 8492). The repeal followed the decision of the Supreme Court in *United States v. Butler*, 297 U. S. 1, 56 Sup. Ct. 312; Act of February 10, 1936, 49 Stat. 1106.

The provisions of the Bankhead Act which are particularly important for consideration in connection with our First and Second Points are given for the convenience of the Court in the Appendix to this Brief.

Those who vote to determine whether the tax shall be levied are the producers, not the ginners. Section 3(a).

Exemptions from the tax are based upon time, manner and character or production, not upon time, manner or character of ginning. Section 4(e).

Exemptions from the tax are allowed to producers, not ginners. The producer is the one who must comply with the conditions and limitations imposed by the Secretary of Agriculture in order to obtain the exemption certificates. Section 6.

Quotas for exemptions are allowed to farms and farmers, not to gins or ginners. Section 7.

The lien of the tax is against the property of the producer, not of the ginner. Section 4(f).

It is the property of the producer that cannot be transported beyond the county except for storing, and cannot be sold, purchased or removed from the bale until the tax has been paid. Section 13(b).

The Secretary of Agriculture is authorized to make regulations protecting the interests of share croppers and tenants in the distribution of exemptions. Section 15.

It is the producer's past history and conduct that is material in fixing the exemption quota. Sections 5, 7 and 8.

That Congress had no intention that the ginner should be put to an expense in connection with the Act is shown by Section 17(b), where the ginner is to be reimbursed up to 25¢ a bale for additional expense incurred by him in connection with the administration of the Act.

If it were merely a tax on ginning, why would the tax not be assessed upon all cotton ginned, wherever and whenever raised, and regardless of the amount raised on a particular farm?

It is common knowledge that the customary charge for ginning a 500 pound bale of lint cotton is approximately $6.00, yet the tax was approximately $30.00 a bale. Clearly, the ginner was not expected to pay the tax out of his ginning charges, or out of his own funds. The ginner was used merely as a convenient collecting agent to enforce the payment of the tax.

No beneficial use can be made of cotton until it is first gin-

ned and baled, and then it cannot be used until the bale is opened. The Act made it impossible for a farmer to sell or make any beneficial use of his cotton until the tax was paid. Moreover, under the stipulations in this case, the ginner would not release the cotton to Petitioners until they personally paid the tax with their own checks, payable directly to the Defendant in this case.

We think the Circuit Court of Appeals was in error in saying:

> "The law applicable to this situation is thus stated in 61 C. J. p. 949, etc., Section 1226:
>
> 'Payment of taxes by a stranger, a mere volunter . . . cannot be made the foundation of any right or claim on the part of such third person.'
>
> "Sec. 1227, p. 950:
>
> 'But a person cannot make the true owner of property his debtor by a mere voluntary payment of taxes thereon.' "

The Circuit Court of Appeals also quotes from 61 C. J. p. 986, Section 1264, as follows:

> "'A payment is voluntary in the sense that no action lies to recover back the amount, not only where it is made willingly, and without objection, but in all cases where there is no compulsion or duress or any immediate and urgent necessity therefor, as a means of preventing an immediate seizure of the tax payer's person or property', etc."

The last of the sentence for which Judge Symes has substituted "etc." reads:

> "or of releasing his person or property from existing detention."

a rather significant omission when we note that under the admitted facts of our case the Santo Tomas Gin Company would not give up possession of the cotton until Petitioners had paid the tax. The learned Judge then says:

> "And see Sec. 1283, p. 1005, to the effect that the burden is upon the taxpayer to prove the payment was not voluntary."

It is true that 61 C. J. p. 1005, Sec. 1283, does contain the following language:

> "In particular, he must prove the fact of payment to the officer authorized by law to receive the taxes . . . and that the payment was not voluntary, but was made under duress or compulsion,"

but this language is immediately followed by the words:

"when this is necessary to a recovery."

Judge Symes in his opinion also says:

> "In the following cases recovery of taxes paid by volunteers under circumstances more or less similar to those of the instant case were denied. Central Aguirre Sugar Co. v. U. S., 2 Fed. Supp. 538, Wourdeck v. Backer, 55 Fed. (2nd) 840 (C. C. A. 8th), certiorari denied 286 U. S. 548; Clift and Goodrich v. U. S., 56 Fed. (2d) 751 (C. C. A. 2nd), certiorari denied 287 U. S. 617; Ohio Locomotive Crane Co. v. Denman, 73 Fed. (2d) 408 (C. C. A. 6th), certiorari denied 294 U. S. 712; Hammerstrom, County Treasurer v. Toy Nat. Bank of Sioux City, 81 Fed. (2d) 628 (C. C. A. 8th)."

Section 20 of the Bankhead Act reads:

> "(Sec. 20) (b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this

Act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund has been duly filed with the Commissioner of Internal Revenue according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under due protest or duress. No suit or proceedings shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision therein within that time, nor after the expiration of two years from the date of the payment of such tax, penalty or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the taxpayer thereof by registered mail."

26 U. S. C. A., Sections 1672 and 1673, reads:

"(a) *Limitations* - (1) *Claim.* No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

"(2) *Time.* No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claims unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates.

"(b) *Protest or duress.* Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress."

We shall briefly examine the authorities cited by Judge Symes, listed above.

Central Aguirre Sugar Co. v. U. S., 2 F. Supp. 538. Here, a tax had been assessed against an *association*. The tax was paid voluntarily by a *corporation*, which had succeeded to the association's assets and become liable for its debts. The Corporation filed a claim for refund, and sued when the claim was denied. No contention was made that the law levying the tax was unconstitutional. The claim was that the tax was not due from the corporation which had paid it, but from the association. The Court pointed out that the tax was lawful as against the association, that the corporation, by succeeding to the assets of the association, had become liable for its debts, and had voluntarily paid the tax in recognition of such liability. The Court said:

"On the other hand, it plainly shows that the corporation recognized its ultimate liability and made the payment without action at law or suit in equity."

If the tax had not been a valid tax as against either the association or the corporation, undoubtedly the corporation would have been allowed a recovery.

Wourdeck v. Becker, Collector, 55 F. (2d) 840. Here, the president of a corporation individually paid a valid tax which had been assessed against the corporation. No threat had been made against, and no duress was practiced upon the President to compel him to pay the tax, but the payment was made voluntarily. It was held that he could not recover. Here, again, there was no question about the validity of the tax.

Clift & Goodrich, Inc., v. U. S., 56 F. (2d) 751. In this case a corporation which had succeeded a partnership voluntarily and with full knowledge of the facts, paid a tax which was due from the partnership. The Court said:

> "The payment was no more, therefore, than a gratuitous discharge of obligor's duty, and on what theory it can be recovered, *if that duty existed*, we cannot conceive. The tax was certainly due from the partners and the Treasury had the right to keep the money, unless it was inequitable to do so, because it came from the corporation. An obligee is surely not bound in good conscience to repay such collections.
>
> "Besides, it sufficiently appears that the corporation had recourse over against the partners. . . . Moreover, the whole issue is in any case irrelevant, for it was not material to the Treasury's right to retain the payment that the petitioner should have indemnity." [Italics ours.]

Ohio Locomotive Crane Co. v. Denman, 73 F. (2d) 408. Here, it was held that where one corporation paid a tax *legally due from another*, and there was no duress or mistake, there could be no recovery by the corporation paying the tax. In that case, the Court said with reference to the Amendment of 1924 to the Internal Revenue Act which did away with the requirement of duress and protest:

> "The amendment permits the recovery of taxes illegally assessed or collected, regardless of whether the payment was voluntary or otherwise, but it gives no aid to one who '*pays another's tax actually due*, with full knowledge of what he is doing.'" [Italics ours.]

Hammerstrom v. Toy National Bank, 81 F. (2d) 628. In that case, the Court said:

> "At common law, as a general rule, voluntary payment of taxes cannot be recovered back.

and the Court cited the case of *Union Pacific Railroad Company v. Dodge County Commissioners*, 98 U. S. 541, 543, 25 Law Ed. 196, where the Supreme Court quoted the following language from *Waubaunsee County Commissioners v. Walker*, 8 Kansas 431:

> "Where a party pays an illegal demand, with a full knowledge of all the facts which render such demand illegal, without an immediate and urgent necessity therefor, or unless to release his person or property from detention, or to prevent an immediate seizure of his person or property, such payment must be deemed voluntary and cannot be recovered back. And the fact that the party at the time of making the payment files a written protest does not make the payment involuntary."

The case under consideration, *Hammerstrom v. Toy National Bank*, supra, was one which involved the construction of the laws of the State of Iowa, and is not material to the point now under consideration.

The case of *Union Pacific Railroad Company v. Dodge County Commissioners*, supra, was decided long before the passage of the Act of 1924 which made protest and duress unnecessary.

Of the above cases cited in the opinion by Judge Symes, four were cases where the taxes were admittedly valid and were legally due from someone and were paid willingly by the one who sought to recover. In *Central Aguirre Sugar Co. v. U. S.*, supra, the tax was paid by the one who was ultimately liable for it. In *Wourdeck v. Becker*, supra, the president willingly paid a tax rightfully assessed against a corporation in which he was interested. In *Clift & Goodrich, Inc., v. U. S.*, supra, the corporation willingly paid a valid tax against the partnership which it succeeded. In *Ohio Locomotive Crane Co. v. Denman*, a corporation willingly paid, with full knowledge of the facts, a tax actually and legally due from another.

All of these cases support our contention. The inference from them is that had the tax been illegal and not actually due from anyone, the person paying the tax would have been allowed to recover. In the language of the last case cited:

> "The amendment (1924) permits the recovery of taxes illegally assessed or collected, regardless of whether payment was voluntary, or otherwise, but it gives no aid to one who pays another's tax actually due with full knowledge of what he is doing."

The other case of *Hammerstrom v. Toy National Bank*, supra, and the cases there cited, dealt with situations to which the amendment of 1924 and the present laws eliminating the necessity of protest and duress were inapplicable.

Additional cases cited by Judge Symes are *Union Pacific Railroad Company v. Board of Commissioners*, 98 U. S. 541, 543, 25 Law Ed. 196; *Little v. Bowers*, 134 U. S. 547; *U. S. v. New York and Cuba Mail Steamship Co.*, 200 U. S. 488; *Blanks v. Hazen*, 85 F. (2d) 284; *Ward v. Love County*, 253 U. S. 17; *U. S. v. Edmondston*, 181 U. S. 500; *Chesebrough v. U. S.*, 192 U. S. 253.

Union Pacific Railroad Co. v. Board of Commissioners, 98 U. S. 541, 543, 25 Law Ed. 196. The Court said:

> "Before these payments were made, there had been no demand for the taxes, and no special effort had been put forth by the treasurer for their collection. The Company had personal property in the county which might have been seized; but no attempt had been made to seize it, and no other notice than such as the law implies had been given that payment would be enforced in that way."

The Court said no attempt had been made by the treasurer to serve his warrant. He had not even personally demanded the taxes from the Company, and certainly nothing had been done

from which his intent could be inferred to use the legal process he held to enforce the collection, if the alleged illegality of the claim was made known to him. This case was decided in 1879, when it was necessary to pay under protest and duress, but even in that case the rule was recognized that where the payments were made to release goods held for duties a recovery was justified upon the fact that the payment was made to release property from detention.

Little v. Bowers, 134 U. S. 547, 33 Law Ed. 1016. This case was decided in 1890. It was held that where a party pays an illegal demand with a full knowledge of all of the facts which render such demand illegal, and without an immediate and urgent necessity therefor, and not to release his property or person from detention or to prevent an immediate seizure, such payment is deemed voluntary and cannot be recovered.

U. S. v. New York & Cuba Mail Steamship Co., 200 U. S. 488. In this case, documentary stamps had been purchased at various times without protest. Thereafter, the stamps were used by affixing them to manifests of cargoes on vessels bound for foreign ports. The Court said:

> "The destination of the stamps cannot affect the payment of the tax which they represent. It may be more or less of an inducement to submit to the tax, but who can determine the degree? . . . Besides, whatever element of coercion there was came from the United States, and it was not as immediate in the case of the manifests as in the case of the deed."

and again:

> "There was no claim of the collector of the port from whom the clearances were asked that Defendant-in-Error was acting under the restraint of the law, and yielding only to enable ships to depart to their destinations."

This case was decided in 1906, prior to the amendment to the Internal Revenue Act in 1924.

Ward v. Love County, 253 U. S. 17, 64 Law Ed. 751. This case was decided in 1920. Mr. Justice Van Devanter said:

"Through the pending suits and otherwise, they were objecting and protesting that the taxation of their lands was forbidden by a law of Congress. But, notwithstanding this, the county demanded that the taxes be paid, and by threatening to sell the lands of these claimants, and actually selling other lands similarly situated, made it appear to the claimants that they must choose between paying the taxes and losing their lands. To prevent a sale and to avoid the imposition of a penalty of 18%, they yielded to the county's demand and paid the taxes, protesting and objecting at the time that the same were illegal. The monies thus collected were obtained by coercive means—by compulsion. The county and its officers reasonably could not have regarded it otherwise; much less the Indian claimants . . . *The County places some reliance on Lamborn v. Dickinson County*, 97 *U. S.* 181, 24 *Law Ed.* 926, *and Union Pacific Railroad Co. v. Dodge County*, 98 *U. S.* 541, 25 *Law Ed.* 196; *but those cases are quite distinguishable in their facts and some of the general observations therein to which the county invites attention must be taken as modified by the later cases just cited.*" [Italics ours.]

One of the cases cited in the above case was *A. T. & S. F. Railway Co. v. O'Connor*, 223 U. S. 280, 56 Law Ed. 436. The opinion in that case was by Justice Holmes. In the course of his opinion he said:

"It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy . . . when, as is common, the State has a more summary remedy such as distress, and the party indicates by protest that he is yielding to what he cannot prevent, *Courts sometimes, perhaps, have been a little too slow to recognize the implied duress under which payment is made*, but, even if the State is driven to an action if at the same time the citizen is put at a serious disadvantage in the assertion of

his legal, in this case of his constitutional, rights, by defense in the suit justice may require that he should be at liberty to avoid those disadvantages by paying promptly and bringing suit on his side. He is entitled to assert his supposed right on reasonably equal terms. If he should seek an injunction . . . he would run the same risk as if he waited to be sued." [Italics ours.]

This was made clear in *Lee Moor v. T. & N. O. Railroad*, 75 F. (2d) 386, where it was held that because of the legal remedy the mandamus there sought could not be had.

U. S. v. Edmondston, 181 U. S. 500, 45 Law Ed. 971. This was a case where a purchaser of public lands had paid $2.50 per acre instead of the statutory price of $1.25 per acre. The mistake was not induced by any misrepresentation of the Government or of its officials, and it was held that there was no law by which the purchaser could sue the United States to recover the payment. The case was decided in 1901, and had nothing to do with taxes.

Chesebrough v. U. S., 192 U. S. 253, 48 Law Ed. 432. This case was decided in 1904. In that case, the Plaintiff sought to recover a sum expended in the voluntary purchase of revenue stamps from a collector to be affixed to a conveyance. The Court said that the purchase of the stamps was purely voluntary, and that there was no protest or notice at the time the stamps were purchased.

None of the cases cited by Judge Symes go so far as to hold that the facts in our case were not sufficient to show that the payment by Petitioners was made under duress. None of them hold that, since 1924, a person who has paid a tax which in fact was not legally due from any one, could not recover the tax, even though it was paid voluntarily. Surely, in this Court, it is not necessary to list the innumerable cases which have been decided since 1924 where it has been held that taxes

which were voluntarily paid, and which were thought to be due from the tax payer at the time he made the payment, can, nevertheless, be recovered when it appears that the taxes were not in fact legally assessed or *were not in fact due from the particular taxpayer*, or that the law under which they were assessed was invalid.

We shall, however, briefly refer to a number of cases which to some extent bear upon the questions which are here involved.

Mahoning Investment Co. v. U. S., 3 Fed. Supp. 622. In this case, a tax was assessed against Mahoning Investment Company. It was paid by Rochester and Pitts Coal and Iron Co. It was actually due from the Coal Company. It was held that the Coal Company had by its conduct accepted the method of assessment, and it could not complain. The tax was actually due from it. It was also held that the investment company could not recover because it did not in fact pay the tax, the tax being paid by the Coal Company. This case is helpful to us because it carries a clear intimation that if there had been no estoppel, the Coal Company could have recovered the tax paid by it, although the taxes had been assessed against the Mahoning Investment Company because of the fact that there had been an improper assessment. A Writ of Certiorari was denied in this case, 291 U. S. 675, 54 Sup. Ct. 526.

Wilson and Co. v. U. S., 15 Fed. Supp. 332. Here, the party who paid the tax led the Government to believe it was satisfied until limitations ran against the party who really owed the tax. It was held that estoppel applied, and prevented a recovery. This case is helpful because the intimation was that if no estoppel had existed, the party who paid the tax could have recovered it, although he had knowingly paid the tax lawfully due from another.

Combined Industries, Inc. v. U. S., 15 F. Supp. 349. The Court said:

> "Moreover, one who in due course knowingly and fraudulently pays to the government a tax of another, *when the person for whom such tax was paid owed the amount remitted*, cannot recover the amount paid on the sole ground that he had no income and owed no tax for the year for which such payment was made." [Italics ours.]

There is an intimation here that if no one had owed the tax, the person who made the payment might have been entitled to recover it.

Bunker Hill Country Club v. U. S., 9 F. Supp. 52, 10 F. Supp. 159. (Certiorari denied, 296 U. S. 583, 56 Sup. Ct. 94). Here, the Club collected the tax from its members, and entered its collections in a separate account, from which it remitted the tax to the Collector. It was held in such a case that the Club could not recover as it had not paid the taxes. The Court said:

> "No tax was paid by the club out of its own funds, and it could not recover."

If the ginner in our case and had brought suit for the tax, under the facts of our case the Court might well have held that the ginner could not recover because it had not paid the tax out of its own funds. The checks signed by Stahmann Farms Company were made payable to the Collector of Internal Revenue, and the money went directly from Stahmann Farms Company to the Collector.

Austin National Bank v. Sheppard, Comptroller, 71 S. W. (2d) 242 (Commission of Appeals of Texas, 1934). The Court said:

"A person who pays an illegal tax under duress has a legal claim for its repayment.

. . .

"Duress in the payment of an illegal tax may be either express or implied, and the legal duty to refund is the same in both instances. 26 R. C. L. 457, Section 413. When the statute provides that the tax payer who fails to pay the tax shall forfeit his right to do business in the state and have the Courts closed to him, he is not required to take the risk of having his right to resort to the Courts disputed and his business injured while the invalidity of the tax is being adjudicated. 26 R. C. L. 458.

. . .

"Under Article 1529, R. C. S., this Company was required to file with the Secretary of State a certified copy of its charter. This it did.

. . .

"The fee of $2500.00 paid for filing the amended charter was demanded and paid while the asphalt company's ten-year permit to do business was in full force. It did not legally owe such fee. If the asphalt company had refused to pay such fee, it could not have gotten its charter amendment filed without resorting to the courts, and would have run the risk of having its right to do business in this state and its right to resort to the courts of this state called in question during the litigation. Also, during such period it would have run the risk of having its business greatly hampered and injured. Under such a record, we hold that the asphalt company paid this tax or fee under implied duress, and not as a volunteer. We further hold that under the rules of law above announced, the state is legally liable to repay this tax so illegally demanded and collected."

Dorrance v. Phillips, Collector, 35 F. (2d) 660. In this case, the Temple Company made a consolidated return as the parent company of the Lackawanna Company. It was later

held that the Temple Company was not the parent company of the Lackawanna Company. The Court said:

> "The payment was accordingly a pure mistake on the part of the Temple Company, and cannot be construed as an assumption of the obligations of the Lackawanna Company by the Temple Company or a voluntary payment of its debts to the government. There was no intention upon the part of the Temple Company to assume the tax obligations of the Lackawanna Company if the two were not in fact consolidated in such a manner as to make the Temple Company liable."

Weir v. McGrath, 52 F. (2d) 201. This was a suit brought against the collector. There was no formal protest of any kind but the claim was made that the taxes were illegally demanded. The deputy collector told the president of the company that the taxes must be paid or the officers of the company would expose themselves to criminal prosecution. The Court was of the opinion that this was sufficient to constitute coercion and duress. It is sufficient when the party indicates by protest that he is yielding to what he cannot prevent. This constitutes implied duress, but the Court said that the amendment of 1924 did away with the necessity for protest and duress. The Court said that the statute of 1924 was a recognition of the fact that the recovery against the collector is in substance and effect a recovery from the government, and that the statute is an example of liberality and fairness upon the part of the government showing its unwillingness to retain the benefit of that which was wrongful, whether the technicalities formerly required had been complied with or not. This rule was applied in the suit against the collector.

Lucas v. Kentucky Distilleries and Warehouse Co., 70 F. (2d) 883. Here, a corporation owned a distillery plant, but the plant was conducted in the name of its employee, Wilkin. The tax claimed to be illegal was actually paid by the Com-

pany, and the Company brought suit to recover the tax. The collector, as a part of his defense, claimed that the distillery was a mere volunteer, and that therefore it could not sue to recover the tax which it had paid. The Court held:

> "Wilkin had no interest in the property and to protect itself from distraint the appellee was compelled to pay the tax and its only remedy was to protest and to sue to recover it back."

The Court said:

> "Moreover, Revised Statute 3251 (26 U. S. C. A. Section 249), imposes a joint and several liability for taxes on distilled spirits, upon every proprietor or possessor, and any person in any manner interested in the use of any still, distillery or distilling apparatus, and impresses a lien on any land or buildings wherein such spirits are in existence. To say that the owner of land upon which the statute impresses a lien for taxes may not in discharging the lien question the validity of the tax requires a rather strained interpretation of his status as taxpayer."

In our case the lien was upon the cotton of Petitioners.

Stone v. White, 301 U. S. 532, 57 Sup. Ct. 851; opinion by Mr. Justice Stone, 1937. Here, the Trustees paid a tax which should have been paid by the beneficiary. The Trustees brought suit to recover the tax after the government's claim against the beneficiaries had become barred by the Statute of Limitations. The Court held that since the tax if recovered by the Trustees would go to the beneficiary, and since the beneficiary should have paid a tax of at least equal amount, and since the government's claim against the beneficiary was barred, the Court would look through the whole transaction and in the proper exercise of equitable principles would deny a recovery. The Court said:

"It is said that as the revenue laws treat the Trustee and the beneficiary as distinct tax-paying entities, a court of equity must shut its eyes to the fact that in the realm of reality it was the beneficiary's money which paid the tax, and it is her money which the petitioners ask the government to return.

. . . .

"To avoid this circuity of action, a court of equity takes cognizance of the identity in interest of Trustee and *cestui que trust.*

. . . .

"Equitable conceptions of justice compel the conclusion that the retention of the tax money would not result in any unjust enrichment of the government. All agree that a tax on the income should be paid, and that if the Trustees are permitted to recover, no one will pay it.

. . . .

"Since in equity the one tax payer represents and acts for the other, it is not for either to complain that the government has taken from one with his right hand when it has, because of the same error, given to the other with its left.

. . . .

"Here, the defense is not a counter-demand on petitioners but a denial of their equitable right to undo a payment which, though effected by an erroneous procedure, has resulted in no unjust enrichment to the government, and in no injury to petitioners or their beneficiary."

Jenkins v. Smith, Collector, 21 F. Supp. 433, 437. In this case, the Court held that the element of estoppel by voluntary payment was eliminated by the fact that the former condition precedent to a suit to recover taxes illegally collected or payment under protest or duress, had been abolished. Section 3226, R. S., as amended (26 U. S. C. A., Sec. 1672, 1673). The

Court said that every tax collection was now necessarily considered to be involuntary.

We think that the case of *White v. Hopkins, Collector of Internal Revenue*, 51 F. (2d) 159, Fifth Circuit, July, 1931, is particularly applicable to our case. Taxes were assessed against the Imperial Gasoline Company, of which P. J. White was a stockholder. A warrant of distraint was issued against the company in care of P. J. White. The Collector made demand upon White for payment of the taxes, and threatened to seize property belonging to White and to file suit against him. In fear of execution of said warrant and the institution of said suit, White made payment of the tax out of his own funds. Later, he made application for a refund of the taxes on the ground that he was not the taxpayer against whom the assessment was made, and that he had paid the tax under duress and threat of distraint. The claim was denied and suit was brought by White for the collection of the tax. The Court held that Appellant's case was governed by Revised Statutes, Section 3226. The Court said:

> "We need not discuss whether the compulsion alleged amounted to duress in law or whether the protest was sufficient, as neither duress nor protest was by this section necessary to be shown. He alleges compliance with the condition precedent of appealing to the Commissioner for a refund. The statute applies to the recovery of any tax 'in any manner wrongfully collected' from anyone, and is broad enough to support the cause af action alleged. There is no doubt from the allegations of the petition that the taxes were wrongfully collected."

The Court also said:

> "However, appellee contends that the Imperial Gasoline Co. was the taxpayer, as defined by the act, and that as it neither appealed to the Commissioner nor brought the suit, and that no one but the Imperial Gasoline Company

could appeal to the Commissioner or maintain a suit to recover back the taxes alleged in this case to have been illegally collected. *In other words, Appellee assumes the position that having collected the tax from one who did not owe it when it could not have been legally collected from one who did, no right of redress exists. It cannot be assumed that the United States has adopted any such illogical and inequitable attitude towards her citizens unless the enactments of Congress clearly leave no alternative.*" [Italics ours.]

The Court also said.

"The reasonable construction of the section is that the definition of 'tax payer' does not exclude other definitions in general use, and commonly understood. The dictionaries all define 'tax payer' as 'one who pays a tax'. *Undoubtedly, appellant paid the tax which he sought to recover back, and therefore would be a tax payer under the usual and ordinary definition.* In paying the tax, appellant was not a mere volunteer. A tax imposed upon a corporation is indirectly a tax upon its stockholders. As a stockholder of the Imperial Gasoline Company he had an interest in paying the tax, although slight, to stop the running of the statute of limitations barring a suit to recover it back and to prevent further accumulation of interest. The Collector demanded payment of the tax and enforced collection by threats. Whether these threats could be made effective is immaterial. They were sufficient to operate on the mind of appellant and induce him to make payment against his will. The Commissioner received the money and retained it. He entertained and passed upon the application for a refund, and notified appellant personally of the rejection of his claim without suggesting that he did so because he was not considered the tax payer." [Italics ours.]

We think that the spirit in which a case of this character should be considered is properly described in *George Moore Ice Cream Co. v. Rose*, 289 U. S. 373, 378, 53 Sup. Ct. 620, 622, opinion by Mr. Justice Cardozo, 1933. The Court said:

"In this situation, the government was unjustly enriched at the expense of a taxpayer, when it held on to moneys that had been illegally collected, whether with protest or without. So, at least, the lawmakers believed and gave expression to that belief, not only in the statute but in Congressional reports. Senate Report No. 398, 68th Congress, First Session, pp. 44, 45; House Report No. 179, 68th Congress, First Session, pp. 33, 34. The amendment was designed to right an ancient wrong. It did not draw a distinction between suits against the body politic and suits against a public officer who was to be paid out of the public purse. It put them in a single class, and made them subject to a common rule. A high-minded government renounced an advantage that was felt to be ignoble and set up a new standard of equity and conscience. There was no thought to discriminate between payments made and those to come. A fine sense of honor had brought the statute into being. We are to read it in a kindred spirit. U. S. v. Emery, 237. U. S. 28, 59 Law Ed. 825."

Under some of the authorities which we have cited, if the Santo Tomas Gin Company had, under the facts of this case, brought a suit against the Collector to recover these taxes, because of the unconstitutionality of the Bankhead Act, it is conceivable that the Court might have held that the evidence showed that the tax was paid by Stahmann Farms, that it was not paid by Santo Tomas Gin Company, that it had suffered no injury, and that therefore it was not entitled to recover the tax.

A similar view was taken by the Supreme Court of Illinois in *Standard Oil Co. v. Bollinger,* 180 N. E. 396. In that case, it was held that where the Standard Oil Company had collected the gasoline tax from its customers and had willingly paid the tax to the Tax Collector, it could not recover because it had not paid the tax out of its own funds. The Court held that the Standard Oil Company had suffered no loss, because of the fact that the funds used by it in paying the tax had been collected by it from others.

The case of *Benzoline Motor Fuel Co. v. Bollinger*, 187 N. E. 657, Supreme Court of Illinois, 1933, deserves consideration. The Benzoline Motor Fuel Company brought suit against Bollinger, Director of Finance of the State of Illinois, to recover a gasoline tax paid by it to the State Treasurer, in the amount of $24,268.90. The law under which the tax had been collected had been previously declared to be unconstitutional in another case brought by another taxpayer. The conteption was made that the tax had not been paid by the plaintiff, but by its customers. Plaintiff, however, claimed that it brought the suit not only for its own benefit, but for the benefit of its customers, to whom it had agreed to make a refund if the tax should be collected. It was claimed that the tax had been voluntarily paid but the tax payer claimed payment under duress. The Court said:

> "It is not necessary that the party paying the tax be in physical danger, or that he be actually placed in a position that his property is about to be seized in satisfaction of the tax, or that his back be to the wall, so to speak. Chicago and Eastern Railway Co. v. Miller, 140 N. E. 823. That case clearly held with the well known rule that a person who accepts the benefits of a statute is generally barred thereafter from challenging its validity, provided no question of public policy or public morals is involved; but where it is an involuntary acceptance of the statutory provisions, or where money is paid under the pressure of severe statutory penalties or to avoid disastrous effects to business the payment is involuntary and the money may be recovered. Union Pacific Railway Co. v. Public Service Commission, 248 U. S. 67, 63 Law Ed. 131. Virtual or moral duress is sufficient to prevent a payment made under its influence from being voluntary. Robertson v. Frank Bros. Co., 132 U. S. 17, 33 Law Ed. 236. Where such duress is exerted under circumstances not justified by law it need only be sufficient to influence the apprehensions and conduct of a prudent businessman. If the duress is exerted by one clothed with official authority, or who is exercising a public employment, less evidence of

compulsion or pressure is required. Justice Holmes, speaking for the Court in A. T. & S. F. Railway Co. v. O'Connor, 223 U. S. 280, 56 Law Ed. 436, said: 'It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy. The rule being established that, apart from special circumstances, he cannot interfere by injunction with the State's collection of its revenues, an action at law to recover back what he has paid is the alternative left. Of course, we are speaking of those cases where the State is not put to an action if the citizen refuses to pay. In these latter, he can interpose his objections by way of defense; but when, as is common, the state has a more summary remedy such as distress, and the party indicates by protest that he is yielding to what he cannot prevent, courts sometimes, perhaps, have been a little too slow to recognize the implied duress under which payment is made.' The evidence for the complainant demonstrated that the Director of Finance intended to take, and did take, all necessary steps to collect the tax imposed on motor fuel, regardless of all questions then raised as to the invalidity of the law. The necessary forms were prepared and sent to all distributors in the State by employees in his office. No indication or hint according to the record, was ever given out that the law would not be enforced. We regard as unimportant the argument advanced that the Director of Finance did not make any threats or coerce any one into paying the tax. The statute designated and empowered that official to collect the tax. *The penalties for non-payment of the tax were not formulated as rules and regulations by the Director; they were part of the statute, so that the statute—not the director—was proclaiming the penalties to the motor fuel distributors of the State.* The distributors had every right to indulge in the legal presumption that an officer of the State would live up to his oath of office to perform the duties imposed upon him by law. The evidence disclosed actions on the part of the Director of Finance of such character as to constitute duress well within the rule laid down in the cases above cited." [Italics ours.]

The Court said that from the evidence it was apparent that the complainant was acting for the benefit of its customers, as well

as for itself; that the facts of the case were such that the Court should hold that the Director of Finance is in control of money that in equity and good conscience he has no right to retain, inasmuch as the avenue for the return of the tax money in full to the customers of the complainant without any deductions was straight and broad. The Court said:

> "To contend that this litigation is an endeavor to give to customers indirectly what the law does not give directly is only to say that the interests of the customers are such that this suit cannot prevail, which in this particular instance would mean that the customers would lose. Such a decision would violate equity and good conscience, as by it the State would receive and retain money illegally collected under an unconstitutional law by resting its right on a technicality and not upon the basic principles of justice."

The Court distinguished the case under consideration from the case of *Standard Oil Co. v. Bollinger*, supra. In the *Benzoline Motor Fuel Company* case, the Court pointed out that the Company had collected the tax from its customers with the agreement that it would seek to recover the tax, and in such event would refund it to the customers.

In our case, it is apparent that the Santo Tomas Gin Company is making no claim for a refund, that the time for making such claim has expired, and that if it had recovered the tax, it would be in duty bound to pay it over to Stahmann Farms. The real taxpayers were the Petitioners in this case, and a grave injustice would be done if they were denied a recovery on the highly technical theory urged by Respondent.

Third Point

The Circuit Court of Appeals erred in holding that the Judgment of the District Court which allowed Petitioners a recovery

against Respondent for the taxes paid by them to him should be reversed, because such taxes were not paid under compulsion or duress.

We adopt as the argument under this Point our argument under our First and Second Points, and especially that portion of the argument which is presented to show that under Section 20 of the Bankhead Act and 26 U. S. C. A., Sections 1672 and 1673, it is no longer necessary that taxes should be paid under protest and duress.

Fourth Point

The Circuit Court of Appeals erred in refusing to hold that the taxes paid by Petitioners should be repaid to them by the Respondent, because the Bankhead Act under which they were assessed was in violation of the Tenth Amendment to the Constitution of the United States.

The Tenth Amendment to the Constitution reads:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

We think that this Court is sufficiently familiar with the Bankhead Act to make it unnecessary for us at this time to fully discuss its provisions. The Bankhead Act was clearly an attempt upon the part of the Congress to regulate the amount of cotton which an individual farmer might raise upon his farm. The so-called tax was a penalty designed to prohibit a farmer from exceeding the quota allowed him under the Act. We think the following authorities sustain our contention: *U. S. v. Butler* (A. A. A. case), 297 U. S. 1-79, 56 Sup. Ct. 312;

Bailey v. Drexel Furniture Co. (Child Labor case), 259 U. S. 20, 42 Sup. Ct. 449; *U. S. v. Lee Moor*, 93 F. (2d) 422 (Affirmed Judgment for return of Bankhead taxes); *Thompson v. Deal*, 92 F. (2d) 478 (This case involved a recovery of sums paid by cotton growers for exemption certificates under the Bankhead Act); *Woner v. Lewis*, 13 F. Supp. 45 (In this case it was held that a cotton producer had an adequate remedy at law in that he could pay the tax and sue for a refund); *Robenson v. Taylor*, 90 F. (2d) 812, and *Glenn v. Smith*, 91 F. (2d) 447 (Both affirmed Judgment for refund of tobacco taxes).

As said by the United States Circuit Court of Appeals of the Fifth Circuit in *U. S. v. Moor*, supra:

> "Immediately after the Agricultural Adjustment Act was held unconstitutional, the Congress repealed the Bankhead Act, as of February 10, 1936, 49 Stat. 1106; and by the Act of March 2, 1936, 49 Stat. 1155, it was declared that all uncollected taxes, penalties and interest and liens therefor arising under it were cancelled and released. Congress thereby indicated that the Bankhead Act was so intimately related to the Agricultural Adjustment Act that the two should go down together."

In *J. Wood Thompson v. Deal, Manager National Surplus Cotton Exemption Certificate Pool*, supra, decided June 28, 1937, certain cotton producers brought suit against Ernest L. Deal, individually and as Manager of the National Surplus Cotton Tax Exemption Certificate Pool and others. The Plaintiffs alleged that they were producers of cotton, and that in order to market their cotton they had purchased tax exemption certificates from the National Surplus Cotton Tax Exemption Certificate Pool; that the monies which they had paid into the Pool were still held by its Manager, who was about to disburse such funds to the farmers who had turned their surplus exemption certificates over to the Pool for sale. They alleged that the Bankhead Act was unconstitutional and void, that they had contributed their money to the Pool under duress, that in fact

the tax exemption certificates were valueless, that the farmers who had turned over their certificates to the Pool had turned over such worthless certificates and had therefore parted with nothing, and that the money which had been collected by the Pool from the Plaintiffs and others similarly situated had been collected by duress, and that in equity such money should be returned to Plaintiffs, who had been compelled to contribute such funds by the duress exerted by the Bankhead Act. The Court in this decision held that the plaintiffs were right, and that the funds which they had contributed to the Pool should be restored to them. The Court said with reference to the validity of the Bankhead Act:

> "The Bankhead Act was repealed February 10, 1936, following the decision in United States v. Butler, 297 U. S. 1, and we take it as settled for the purposes of this discussion—and indeed it was not otherwise contended in the argument and in the briefs by government counsel, that the decision of the Butler case invalidating the Agricultural Adjustment Act is controlling, and that the Act now under consideration and regulations made pursuant to it are, therefore, invalid."

The Court next passed to a consideration of the contention made by the Defendants to the effect that the Plaintiffs had voluntarily purchased exemption certificates and were therefore not entitled to recover the sums paid by them. The Court said:

> "The argument on behalf of the government is that appellants were not coerced into doing business with Manager Deal. Counsel say that officer could not compel appellants to purchase certificates from the Pool, that Appellant could just as well have complied with the tax provisions of the Act, and in that case would have had recourse against the United States for the recovery of the taxes, if the exaction were shown to be invalid."

We see that in this case the government was contending that the producers of cotton—not ginners—could pay the tax and

then recover the sums so paid if the Bankhead Act were invalid, a position directly contrary to the position taken by the government in this case. The Court then goes on to say:

> "From these facts they draw the conclusion that appellant's purchase of pool certificates was due to their own voluntary desire to avoid payment of the tax and thus to save money. This, they say, is not duress. . . . But we think this contention cannot be sustained. The government had no right to limit the production of cotton or to use the taxing power exclusively to accomplish that end. Having accepted the allotment and by good husbandry and diligence, or by the fertility of his land, grown and harvested a crop in excess of the allotment, he was faced, in the alternative of paying to the government in the form of a tax, half the value above the allotment or purchasing certificates at a sacrifice of two-fifths. Failing one or the other of these courses, he could not sell his cotton without subjecting himself to the penalty of fine and imprisonment. Whatever may have been the old rule as to the characteristics of duress and coercion, a more liberal view prevails—and ought to prevail today,—a change of viewpoint which has arisen as government has extended its control over the domestic concerns of the citizen. The Supreme Court of Wisconsin (Minneapolis, St. Paul and S. S. M. Ry. Co. v. Railroad Commission, 197 N. W. 352) has expressed this better view as follows: 'The old rule that there could be duress only where there was a threat of loss of life, limb or liberty, has so changed that duress may sometimes be implied when a payment is made or an act performed to prevent great property loss or heavy penalties, when there seems no adequate remedy except to submit to an unjust or illegal demand, and then seek redress in the courts.' We are not unmindful of the rule that ordinarily when money has been voluntarily paid with full knowledge of the facts it cannot be recovered on the ground that payment was made under a misapprehension of the legal rights and obligations of the person paying. But we think this rule has no present relevancy for, as Mr. Justice Clifford said in U. S. v. Ellsworth, 101 U. S. 170,—in a very clear case of what many courts would

have called a voluntary payment made under misapprehension of legal rights—'Call it mistake of law or mistake of fact, the principles of equity forbid the United States to withhold the same from the rightful owner'. We might prolong this discussion indefinitely, for the books are full of cases on the subject, but this would avail us nothing since, as we think, the question we have asked is answered in principle by the Supreme Court in Union Pacific R. Co. v. Public Service Commission, 248 U. S. 67."

The Court then quotes from the above decision in the Supreme Court, and following such quotation says:

"We think it is manifest from what is said in the case just cited that the question of whether a payment is voluntary or involuntary has been in a large measure relieved of the artificial tests formerly applied by some courts. Here, the payment was made under such an urgent necessity as to imply that it was made under compulsion; and this brings us to the final question in the case, namely, whether in order to recover appellants must show that the compulsion or coercion came from the parties who had deposited certificates in the pool."

The Court then said:

"It would be manifestly incorrect to say that the Act did not compel the purchase of certificates, for both purchase and sale were immediately necessary to all concerned,—necessary to the purchasing farmer in order that he might realize more or suffer less on account of his industry, necessary to the government in order that its plan of benefits and gratuities might be consummated, and necessary to the depositor in order that he might obtain the benefits. In the situation we have here, Deal was at once the representative of the coercive force by which payment was compelled, and the representative of those who were the intended beneficiaries of the payments . . . . It is an ancient maxim of the law that what is forbidden to a person to do himself he cannot do by the agency of another."

Certainly, if one who has purchased exemption certificates may recover his money from the one to whom he paid it for the certificates, a farmer who has paid the full tax to the Collector of Internal Revenue in order to dispose of his cotton may pursue the remedy held open to him by the very terms of the Act and presented by the government in equitable suits prosecuted by farmers as an adequate remedy preventing the exercise of equity jurisdiction.

Fifth Point

The Circuit Court of Appeals erred in not holding that the taxes paid by Petitioners should be repaid to them by Respondent, because the Bankhead Act under which they were assessed was in violation of the Fifth Amendment to the Constitution.

The Fifth Amendment provides that no person shall "be deprived of life, limb or property without due process of law." The act, considered as a revenue measure, is arbitrary and capricious, and takes property without due process of law. An examination of the various quota and exemption provisions of the Bankhead Act will demonstrate its invalidity under the principles announced in the following opinions: *Railroad Retirement Board v. Alton Railroad Co.*, 295 U. S. 330; *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555; *Stewart Dry Goods Co. v. Lewis*, 294 U. S. 550; *Nichols v. Coolidge*, 274 U. S. 531, 542; *Blodgett v. Holden, Collector*, 275 U. S. 142.

Sixth Point

The Circuit Court of Appeals erred in refusing to hold that the taxes paid by Petitioner should be repaid to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 9, cl. 4 of the Constitution, providing: "No Capitation, or other direct, tax

shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken."

Seventh Point

The Circuit Court of Appeals erred in refusing to hold that the taxes paid by Petitioners should be repaid to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 2, cl. 3 of the Constitution, which provides: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers."

Authorities

Brushaber v. Union Pacific Railroad Co., 240 U. S. 1;
Pollock v. Farmers Loan & Trust Co., 157 U. S. 429;
Knowlton v. Moore, 178 U. S. 41;
Stewart Dry Goods Co. v. Lewis, 294 U. S. 550;
Dawson v. Kentucky Distilleries & Warehouse Co., 255 U. S. 288.

Eighth Point

The Circuit Court of Appeals erred in refusing to hold that the taxes paid by Petitioners should be repaid to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 8, cl. 1, which provides: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."

Authorities

Knowlton v. Moore, 178 U. S. 41;
Patton v. Brady, 184 U. S. 608;
Flint v. Stone-Tracy Co., 220 U. S. 107;
Billings v. U. S., 232 U. S. 261;
Brushaber v. Union Pacific Railroad Co., 240 U. S. 1;
LaBelle Iron Works v. U. S., 256 U. S. 377;
Bromley v. McCaughn, 280 U. S. 124.

Ninth Point

The Circuit Court of Appeals erred in refusing to hold that the taxes paid by Petitioners should be repaid to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 1 of the Constitution, which provides: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives".

A reading of the Bankhead Act will demonstrate that in many important fields the Congress has delegated powers to the President, the Secretary of Agriculture, and to cotton farmers.

Authorities

Panama Refining Co. v. Ryan, 293 U. S. 388;
Schechter Poultry Corp. v. U. S., 295 U. S. 495.

CONCLUSION

We respectfully request that a Writ of Certiorari issue to the United States Circuit Court of Appeals for the Tenth Circuit in order that the errors committed by that Court may be considered and corrected by this Court.

Respectfully submitted,

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APPENDIX

(Sec. 3) (a) When the Secretary of Agriculture finds for the crop year 1935-1936 . . . if the provisions of this Act are effective for such crop year, that two-thirds of the persons who have the legal or equitable right as owner, tenant, sharecropper or otherwise, to produce cotton on any cotton farm or part thereof in the United States for such crop year favor a levy of a tax on the ginning of cotton in excess of an allotment made to meet the probable market requirements and determines that such a tax is required to carry out the policy declared in Section 1, the Secretary shall ascertain from an investigation of the available supply of cotton and the probable market requirements the quantity of cotton that should be allotted, in accordance with the policy declared in Section 1, for marketing in the channels of interstate and foreign commerce, from production of cotton during the succeeding cotton crop year, exempt from the payment of taxes thereon.

(Sec. 3.) (c) For the crop year 1934-1935 ten million bales is hereby fixed as a maximum amount of cotton of the crop harvested in the crop year 1934-1935, that may be marketed exempt from payment of the tax herein levied . . . .

Sec. 4.) (a) There is hereby levied and assessed on the ginning of cotton hereafter harvested during the crop year with respect to which this Act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound . . . .

(Sec. 4.) (c) Every person ginning any cotton subject to tax under this Act (whether as agent of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the Collector for the District in which the

ginning is done, or to such other person as such Collector may direct . . . . The tax shall, without assessment by the Commissioner or notice from the Collector, be due and payable to the Collector at the time so fixed for filing the return.

(Sec. 4.) (e) No tax shall be imposed under this Act with respect to —

(2) An amount of cotton harvested in any crop year from each farm equal to its allotment.

(3) Cotton harvested prior to the crop year 1934-1935.

(Sec. 4.) (f) The tax shall not be collected upon the ginning of cotton which is to be stored by the producer thereof either on the farm or at such place as may be permitted by regulations prescribed by the Secretary of Agriculture and the Secretary of the Treasury. In such cases, the payment of the tax shall be postponed, but shall be paid at the time when bale tags are secured for such cotton. Bale tags may be secured for any of such cotton at any time after ginning, (1) upon the payment to such person as the Commissioner may direct, of the amount of tax which would have been payable at the time of ginning, or (2) upon the surrender of certificates of exemption covering an amount of cotton not less than the amount of such cotton. Until bale tags are secured for such cotton, such cotton shall be subject to a lien in favor of the United States for the amount of the tax payable with respect to the ginning of such cotton. The right to postponement of the payment of the tax under this sub-section shall be established in accordance with such regulations as the Secretary of Agriculture and the Secretary of the Treasury may prescribe. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe regulations providing for stamping the containers of such cotton so as to indicate the time of ginning and the amount of tax payable with respect thereto.

(Sec. 4.) (g) The right to exemption under Paragraph (2) of sub-section (e) shall be evidenced by a cetificate of exemption issued as herein provided, which certificate of exemption shall be conclusive proof of the right to such exemption.

(Sec. 5.) (a) When an allotment is made, in order to prevent unfair competition and unfair trade practices in marketing cotton in the channels of interstate and foreign commerce, the Secretary of Agriculture shall apportion to the several cotton producing states the number of bales the marketing of which may be exempt from the tax herein levied . . . .

(Sec. 5.) (b) The amount allotted to each state (less the amounts allotted under Section 8) shall be apportioned by the Secretary of Agriculture to the several counties in such State on a basis and ratio, applied to such counties, similar to that set forth in sub-section (a), except that . . . .

(Sec. 6.) A producer of cotton desiring to secure a tax exemption certificate may file an application therefor with the agent designated by the Secretary of Agriculture, accompanied by a statement under oath showing the approximate quantity of cotton produced on the lands presently owned, rented, sharecropped, or controlled by the applicant during a representative period fixed by the Secretary of Agriculture . . . No certificate of exemption shall be issued and no allotment shall be made to any producer unless he agrees to comply with such conditions and limitations on the production of agricultural commodities by him as the Secretary of Agriculture may, from time to time, prescribe, to assure the co-operation of such producer in the reduction programs of the Agricultural Adjustment Administration, and to prevent expansion on lands leased by the Government of competitive production by such producer of agricultural commodities other than cotton.

(Sec. 7.) (a) The amount of cotton allotted to any county

pursuant to section 5 (b) shall be apportioned by the Secretary of Agriculture to farms on which cotton has been grown within such county . . . .

(Sec. 7.) (a) (3) . . . The Secretary of Agriculture, in determinating the manner of allotment to individual farmers, shall provide that the farmers who have voluntarily reduced their cotton acreage shall not be penalized in favor of those farmers who have not done so.

(Sec. 8.) Whenever an allotment is made pursuant to section 3, not to exceed 10 per centum of the number of bales allotted to each state shall be deducted from the number of bales allotted to such state, and allotment in such State —

(a) To producers of cotton on farms where, for the preceding three years less than one-third of the cultivated land on such farms has been planted to cotton;

(b) To producers of cotton on farms not previously used in cotton production;

(c) To producers of cotton on farms where, for the preceding five years, the normal cotton production has been reduced by reason of drought, storm, flood, insect pests, or other uncontrollable natural cause; and

(d) To producers of cotton on farms where, for the preceding three years, acreage theretofore planted to cotton has been voluntarily reduced so that the amount of reduction in cotton production on such farm is greater than the amount which the Secretary finds would have been an equitable reduction applicable to such farms in carrying out a reasonable reduction program. The allotments provided for in this section shall be in addition to the amounts apportioned to the counties under section 5 (b).

(Sec. 10.) (a) Upon the payment of the tax on any cotton or the surrender of exemption certificates covering cotton, the collector receiving such payment or certificates shall deliver to the persons so paying or surrendering an appropriate number of bale tags, which shall be affixed to said cotton.

(Sec. 12.) The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying bale tags, and the method of accounting for receipts from the sale of and for the use of such bale tags, and (b) such other regulations as he shall deem necessary for the enforcement of the taxing provisions of this Act.

(Sec. 14.) (b) Except as may be permitted by regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, with due regard for the protection of the Revenue, no person shall: (1) Transport, except for storing or warehousing, under the provisions of Section 4 (f) (storing or warehousing) beyond the boundaries of the county where produced, any lint cotton to which a bale tag issued under this Act is not attached; or (2) sell, purchase, or open any bale of lint cotton to which a bale tag issued under this Act is not attached.

(Sec. 14.) (c) No seed cotton harvested during the crop year with respect to which the tax is in effect shall be exported from the United States or any possession thereof to which this Act applies, to any possession of the United States to which this Act does not apply or to any foreign country.

(Sec. 15.) (b) The Secretary of Agriculture may make regulations protecting the interests of share-croppers and tenants in the making of allotments and the issuance of tax exemption certificates under this Act.

(Sec. 17.) (b) Appropriations for administrative expenses under this Act are authorized to be made available to enable the Secretary of Agriculture to pay any person, who, in connection with the operation of any cotton gin, incurred additional expenses in connection with the administration of this Act with respect to cotton ginned during the crop year 1935-1936, or any subsequent crop year, in which this Act is in effect, and who applies to the Secretary therefor, compensation in the amount of such additional expenses, but not in excess of the rate of 25 cents per bale of such cotton ginned by such person, provided proof satisfactory to the Secretary of Agriculture is furnished that the additional expenses for which such person makes application have not been passed on in any manner whatsoever (Section 40 of the Act of August 24, 1935).

(Sec. 20.) (a) No refund of any tax, penalty, or sum of money paid shall be allowed under this Act unless claim therefor is presented within six months after the date of payment of such tax, penalty, or sum.

(Sec. 21.) If any provision of this Act, or the application thereof, to any person or circumstance is held invalid, the remainder of this Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.